

Tennessee Ethics Commission  
May 27, 2008  
Minutes

The Tennessee Ethics Commission met on Tuesday, May 27, 2008, at 8:30 a.m. at the State Library and Archives. Commissioners Hall, Neal, Garland, and Purser were present at the outset of the meeting. Commissioner Hall called the meeting to order at 8:35 a.m. Commissioner Knight arrived at 8:46 a.m. and Commissioner Brown arrived at 9:53 a.m.

Commissioner Hall explained the voting procedure of the Commission and instructed visitors wishing to speak to sign in.

*Approval of Minutes*

Minutes for the February, March, and April Commission meetings were considered:

Commissioner Neal submitted one correction re: content and one addition to the February minutes and moved to adopt the minutes including her edits. Commissioner Purser seconded. The Commission approved the February minutes as edited by vote of 4-0.

Commissioner Neal submitted two edits re: form and content to the March minutes. Commissioner Hall moved to adopt the March minutes with Commissioner Neal's edits. Commissioner Purser seconded. The Commission adopted the March minutes with edits by vote of 4-0.

Commissioner Purser moved to adopt April minutes and Commissioner Garland seconded. Commissioner Neal offered one clarification concerning her discussion of Informal Show Cause Hearing citations. Commissioner Purser agreed to amend his motion to include Commissioner Neal's clarification. The Commission adopted the April minutes with clarification by vote of 4-0.<sup>1</sup>

**OLD BUSINESS**

*Boaz OR, #0708*

Following discussion pertaining to the past debate on the multiple questions posed in the Opinion request, Commissioner Garland moved to have staff draft an opinion on the seven numbered questions (numbers 1-5, and 7-8) as to which the Commission was in agreement, and to have legal staff do a separate draft addressing the remaining two questions (Questions 6 and 9). Commissioner Garland stated his intent that the seven questions as to which the Commission was in agreement should not come back before the Commission. Commissioner Neal seconded Commissioner Garland's motion. Commissioner Knight made comments regarding her suggested edits, and suggested that the parts of questions 6 and 9 that were to be dealt with separately should be assigned letters for ease of reference. Commissioner Hall stated his understanding that the staff would consider Commissioner Knight's suggested edits to the seven question opinion, that unresolved issues as to style and substance after such consideration would

---

<sup>1</sup> Commissioners Knight and Brown were not present for the votes on February, March, or April Minutes.

be resolved by the Chair, if necessary, and that the resulting draft would be circulated to all Commissioners for seventy-two (72) hour review. The motion passed unanimously, 5-0.<sup>2</sup>

Legal staff was directed to draft a separate opinion on the first part of question 6 and the second part of question 9, and to submit this separate opinion to the Commission at the next meeting. Commissioner Knight suggested that legal staff should analyze whether any of the exceptions to the gift ban, set out in Tenn. Code Ann. § 3-6-305(b) would apply.

#### *Commission Financial Statement*

Executive Director Androphy presented the Commission with a revised financial statement. Commissioners Neal and Knight questioned Director Androphy on the form, format, and content of the statement and the figures contained therein. Director Androphy agreed to further refine the Financial Statement and return it to the June Commission meeting, including placement of “Revenues” at the beginning of the statement, and a separate breakdown of Commission travel. No vote was taken.

#### *Informal Show Cause Proceedings: Employers of Lobbyists, Failure to File Expenditure Reports*

Chairman Hall recognized four persons in the audience desiring to speak on behalf of an employer. Presentations were limited to five minutes by Chairman Hall. The first to comment on violations was Kevin Goldsmith on behalf of Generic Pharmaceutical Corporation. Discussion followed pertaining to the underlying procedure of assessing fines and “good cause”. Osei Mevs spoke on behalf of Meharry Medical College, Anne Carr spoke on behalf of Carrie Ermshar of Tennessee Association of Homes and Services for the Aging, and Gif Thornton spoke on behalf Fresenius Health Care.

Following discussion of staff recommendations for fines, Commissioner Knight submitted a grid of those in violation and proposed fine amounts for late filing or failure to file. Commissioner Neal moved that the Commission adopt the FindLaw definition of “good cause” presented in writing by Assistant Legal Counsel Willow Fort. Commissioner Purser seconded. The motion passed unanimously, 6-0.<sup>3</sup>

Commissioner Hall then moved that the Commissioners consider Commissioner Knight’s grid and then forward their suggestions to staff, and that staff attempt to harmonize Commissioner suggestions and re-submit for Commission review. Commissioner Purser seconded. Commissioner Brown offered a friendly amendment to the motion that staff would return at the June meeting with recommendations. Commissioner Brown made another friendly amendment for the Commissioners to have their edits submitted to staff by fifteen (15) calendar days prior to the June 24 meeting. There was no second. The motion passed unanimously, 6-0.

Director Androphy discussed the case of Southern Four Wheel Drive Association, and the staff recommendation that the penalty decided upon at the April meeting be rescinded because the Association had in fact responded before the April meeting. Commissioner Knight moved with

---

<sup>2</sup> Commissioner Knight was present for this vote. Commissioner Brown had not yet arrived.

<sup>3</sup> Commissioner Brown participated in this vote.

respect to Southern Four Wheel Drive Association that the penalty be rescinded. Commissioner Brown seconded the motion. Commissioner Neal clarified that the fine would be rescinded and Commissioner Brown recommended that they be moved to the other group, of those that filed late, and considered again at a later date. The motion as clarified passed unanimously, 6-0. The Commission also authorized the Director to send an order and a letter to Southern Four Wheel Drive Association notifying them of the above mentioned action.

*Jackson OR, #0806*

There was discussion whether the requests from Senator Jackson and Representative Todd were “proper requests” within the meaning of Tenn. Code Ann. §3-6-308(a)(4), considered in light of the wording of Tenn. Code Ann. § 3-6-107(3) and the context of the entire Reform Act. Some Commissioners questioned whether a request from someone other than the person whose conduct was at issue was a proper request. Some Commissioners noted the difficulty of ascertaining the relevant facts to serve as a basis for an advisory opinion when the request is from someone who is not privy to all relevant facts. Finally, the Act makes no provision for giving notice to any third party whose conduct may be put in issue by a request, or for giving such third parties an opportunity to be heard on the request. Some Commissioners were concerned that rendering an advisory opinion under such circumstances would raise questions of denial of the affected parties’ rights to due process of law.

Commissioner Neal made a motion to decline to answer the requests. Commissioner Hall seconded Commissioner Neal’s motion. After some discussion, the motion was ultimately amended to propose that the Commission find that under these specific circumstances the requests were not the proper subject of an advisory opinion. The motion passed by a vote of 4-2, with Commissioners Garland, Hall, Knight, and Neal voting yes and Commissioners Brown and Purser voting no. The Commission further decided that this decision would be communicated to the requestors and other affected parties in the form of a letter from Chairman Hall which would be sent out after seventy-two (72) hour review by all other Commissioners.

*Gowan, OR #0802*

General Counsel Himmelreich recommended that in light of the legislative intent manifest in H.B. 3753, the Commission should not issue an opinion on its own motion on the subjects raised by Mr. Gowan’s withdrawn request. Commissioner Brown moved that the Commission not issue an opinion. Commissioner Purser seconded the motion. The motion passed unanimously, 6-0. Chairman Hall requested that Director Androphy communicate the Commission’s decision to Mr. Gowan by means of a letter.

**NEW BUSINESS**

*Informal Show Cause Proceedings: Public Officials, Failure to File Disclosure of Interest Statement*

*Mr. L.J. Cheairs*

Director Androphy described the basis for the show cause notice to Mr. Cheairs for failure to file his 2007 statement of disclosure of interest. His 2008 statement was filed late. The Commission discussed the question whether Mr. Cheairs's March 2008 filing with the Commission was for 2007 or 2008. Commissioner Purser moved to fine Mr. Cheairs seven hundred and fifty dollars (\$750.00) for failure to file his 2007 statement. Commissioner Brown suggested that the Commission should treat Mr. Cheairs as unfilled for 2007 and as a late filer for 2008, and that he should be sent a show cause notice regarding late filing in 2008. Commissioner Purser accepted this suggestion as a friendly amendment. The motion passed unanimously, 6-0.

*Dr. John Petersen*

Director Androphy described the basis for the show cause notice to Dr. Petersen for failure to file timely for 2008. Commissioner Purser noted that for item 6 of Dr. Petersen's statement, "Investments," Dr. Petersen had checked the box marked NONE. Commissioner Purser was concerned that this statement was inaccurate in view of Dr. Petersen's publicly reported earnings from the University of Tennessee. Commissioner Knight moved to assess penalties at the maximum rate of twenty five dollars (\$25.00) a day for the period from March 24, 2008 through April 3, 2008, the date of filing. This would be a total of two hundred and fifty dollars (\$250.00). Commissioner Neal seconded the motion. The motion passed unanimously, 6-0. The Commission directed General Counsel Himmelreich to notify Dr. Petersen of the Commission's decision, and to request Dr. Petersen clarify his statement. No vote was taken.

*Non-Payment of Training Fees: Possible Action*

General Counsel advised the Commission regarding options as to collection of lobbyist training fees. Commissioner Purser moved that beginning in 2009 lobbyist training fees and lobbyist registration fees will be combined, at the time of registration, and that registration will not be effective until both are paid. Following discussion of volunteer lobbyists and other concerns, Commissioner Brown seconded the motion. The motion passed unanimously, 6-0.

*Random Audits of Lobbyists: Percentage*

Following discussion of the time frame for selection and later audits, as well as the statutory guidelines for fixing a percentage of lobbyists to audit, Commissioner Purser moved to accept four percent (4%) as the percentage of lobbyists to audit randomly in 2008. Commissioner Garland seconded the motion. The motion passed unanimously, 6-0.

*Operating Procedures for Commission*

General Counsel Himmelreich asked the Commission for guidance as to whether concurrences and dissents were required to be presented at public Commission meetings prior to being posted on the Commission website. Commissioners indicated that staff would have the authority to post such dissents, concurrences, and separate statements without such public presentation. However, all Commissioners who voted in favor of the main or Commission opinion should be given an

opportunity to review, during a seventy-two (72) hour period, all dissenting, concurring, or other statements. If, within that period, a Commissioner who voted in favor of the main opinion indicates to staff an intent to move the Commission to reconsider the main opinion at the next meeting, then staff is directed not to post the opinion or other statements pending action at the next meeting. Commissioner Knight made a motion to this effect, and also stipulated that staff is directed to include all concurrences, dissents, or other statements at the end of the main opinion, just as with judicial opinions. Commissioner Neal seconded the motion. The motion passed unanimously, 6-0.

#### *General Counsel's Report*

General Counsel Himmelreich reported on the imminent effective date of H.B. 3753, which requires that the Commission and legal staff consult legislative history before issuing either an advisory opinion of the Commission or an informal response of legal staff. Legislative history of the Reform Act includes over one hundred and forty legislative audio tapes. To enable responses to request within a reasonable time, it will be necessary to make this material accessible in a database type format. Director Androphy addressed staff workload and fiscal concerns of undertaking the project. Mark Greene and Anne Carr mentioned from the audience that Senate and House Journals could be valuable. Commissioners voiced appreciation that the bill conferred upon staff the ability to confirm informal response requests by e-mail, thus protecting the staff from any later misunderstandings about the nature of telephone requests and responses. Following discussion, the Commission asked that staff provide sets of figures to better indicate what will need to be decided both in terms of software, allocation of funds, and staffing concerns. There was no vote.

#### *Executive Director's Report*

Director Androphy discussed the filing status of Lobbying Expenditure Reports, as well as local official disclosure statements. Director Androphy also mentioned show cause notices to delinquent filers, and a projected online training presentation from an OIR representative at the June 24, 2008 Commission meeting.

#### *Matters confidential pursuant to Tenn. Code Ann. § 3-6-202*

The Commission agreed that action as to certain matters that are confidential by law could be discussed in a non-public conference call. The time and date were to be arranged by staff working with the Commissioners.

Chairman Hall adjourned the meeting at 3:02 p.m.